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# PROMOTING CHILD PROTECTION: AN EMPIRICAL STUDY OF POCSO ACT ENFORCEMENT IN INDIAN STATES

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## ABSTRACT

This study focuses on evaluating the effectiveness of the Protection of Children from Sexual Offences (POCSO) Act in preventing child sexual abuse across different states in India. The POCSO Act was established in 2012 as a legal framework to safeguard minors from sexual assaults; however, its implementation varies regionally. By analyzing state-level statistics, such as the number of reported cases, prosecution success rates, and conviction outcomes, this research highlights disparities in POCSO Act enforcement. Data from the National Crime Records Bureau (NCRB) reveals significant differences in the implementation of the Act, with states like West Bengal, Uttar Pradesh, and Maharashtra reporting the highest number of cases but facing challenges with slow conviction rates and prolonged legal processes. In contrast, states like Tamil Nadu and Kerala demonstrate more efficient handling of cases, resulting in swifter verdicts and higher conviction rates. The study also explores how socioeconomic factors like urbanization, poverty, and literacy levels impact the effectiveness of POCSO enforcement. Regions with better socioeconomic conditions and higher literacy rates tend to have more robust enforcement mechanisms, while areas with lower socioeconomic status and higher levels of poverty struggle to implement the law effectively. This research underscores the importance of considering socioeconomic factors in evaluating the success of child protection efforts. Recommendations for enhancing the implementation of the POCSO Act nationwide are outlined in the conclusion of the paper. These recommendations consist of establishing specialized fast-track courts, implementing consistent training programs for law enforcement officers, and enhancing the allocation of funds to organizations that protect children. The goal of this research is to contribute to the establishment of standardized and effective procedures for ensuring the safety of children in India by tackling these disparities.

**Keywords:** POCSO Act, Child protection, Sexual offences, Law enforcement, Indian states, judicial processes, Regional.

## 1. INTRODUCTION

Child protection is a significant global concern, and India faces substantial challenges in safeguarding its children, with one of the highest rates of child protection issues worldwide. In 2012, the Indian Government enacted the Protection of Children from Sexual Offences (POCSO) Act in a landmark effort to prevent sexual abuse and exploitation of children. This Act establishes special courts to ensure swift trials for offences such as sexual assault, harassment, and child pornography.

Despite the comprehensive nature of the POCSO Act, its implementation has varied among different states in India. The purpose of this study is to analyze how the POCSO Act has been enforced in various Indian states, highlighting the obstacles and successes encountered in its implementation. This research aims to provide a thorough understanding of child protection in India through both quantitative data and qualitative observations and offers recommendations for improving the legal framework to enhance protection against sexual abuse for children.

In India, child sexual abuse is a crime that is underreported yet has epidemic proportions. According to a recent study on the incidence of sexual abuse among teenagers in Kerala, 36% of males and 35% of girls had been sexually abused at some point in their lives<sup>1</sup>. In a similar study, the Government of India estimated the prevalence of sexual abuse in 17,220 children and adolescents. The startling findings showed that every second child in the nation experienced sexual abuse: 52.94% of the victims were male and 47.06% were girls. Assam 52.27% had the highest reported rate of sexual abuse, followed by Delhi 41%, Andhra Pradesh 22.87%, and Bihar 33.27%<sup>2</sup>. According to UNICEF 1 in 10 girls under the age of 20 have been forced to engage in sex or perform other sexual acts. 90% of cases involve the victim knowing the offender<sup>3</sup>.

## 2. BACKGROUND AND LEGISLATIVE FRAMEWORK

Child sexual abuse (CSA) in India was previously a taboo topic that was largely ignored by the

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<sup>1</sup>Krishnakumar P, Satheesan K, Geeta MG, Sureshkumar K. Prevalence, and spectrum of sexual abuse among adolescents in Kerala, South India. *Indian J Pediatr.* 81:770–4. 2014

<sup>2</sup>Sydney Moirangthem, Naveen C. Kumar, and Suresh Bada Math, Child Sexual Abuse: Issues and Concerns, v142(1), Indian Journal of Medical Research (IJMR), 1 (1-3), 2015

<sup>3</sup>UNICEF (2022) Retrieve from: <https://www.unicef.org/protection/sexual-violence-against-children>. Accessed on 29.08.2024.

media and legal system. The act of abusing children was not considered a crime until recently, with rape being the primary, if not only, legally recognized form of sexual offense against minors in India. Various inappropriate behaviours, such as harassment, child sexual assault (which is different from rape), and exploitation of pornography, were not addressed by the law due to the lack of specific legislation. The Ministry of Women and Child Development, along with NGOs and activists, have been actively working to break the silence surrounding CSA and have been successful in creating political and public awareness on the issue in recent years.

To reduce gaps in services and enhance the establishment of a proficient child protection system, the Ministry of Women & Child Development, Government of India, introduced the "Integrated Child Protection Scheme (ICPS)" in 2009. The core principles of "upholding child rights" and "prioritizing the child's well-being" form the basis of this initiative. Unifying the several MWCD child protection programs into a single, centrally supported program seeks to assist all children, especially those who are in challenging situations. Children in need of care and protection, as well as those who are in conflict and touch with the law, are the primary targets of the ICPS's operations.<sup>4</sup> The Ministry of Women and Child Development led the initiative that resulted in the Protection of Children from Sexual Offences (POCSO) 2012 Act. Up to 2012, the Indian Penal Code (IPC) contained three non-child-specific sections that addressed the only sexual offences against minors that were legally recognized. Only three types of crime were reported: outraging modesty of a woman (unspecified acts – section 345<sup>5</sup>), rape (sexual intercourse without consent – section 376<sup>6</sup>), and unnatural acts (carnal intercourse against the order of nature with any man, woman, or animal – section 377<sup>7</sup>). As a result, if other types of non-penetrative sexual assaults, harassment and exploitation were reported, they would not have been officially recognized as crimes.

To protect children from abuse, the Indian Government has implemented the "Protection of Children from Sexual Offences (POCSO) Act, 2012 a specific law. "The Act and the regulation outlined there under came into force on November 14, 2012". With child – friendly mechanism for reporting, recording evidence, investigating, and expeditiously trying offenders through Special Courts, the POCSO Act, 2012 is a comprehensive law that protects children from

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<sup>4</sup>Ministry of Women & Child Development (2010), The Integrated Child Protection Scheme, Government of India: New Delhi.[http://wcd.nic.in/icpsmon/st\\_abouticps.aspx](http://wcd.nic.in/icpsmon/st_abouticps.aspx) Accessed on 29.09.2024.

<sup>5</sup>Indian Penal Code, 1860, S – 345, No 45, Acts of Parliament, 1860, India

<sup>6</sup>Indian Penal Code, 1860, S – 376, No 45, Acts of Parliament, 1860, India

<sup>7</sup>Indian Penal Code, 1860, S – 377, No 45, Acts of Parliament, 1860, India

sexual assault, sexual harassment, and pornography while also protecting their interests at every stage of the legal system.<sup>8</sup> The POCSO Act was passed due to the increasing number of child sexual abuse cases in India and the recognition that these crimes needed a specialized legal system. This legislation includes "Special Courts" where the child victim can give a statement in a child-friendly environment while keeping their identity confidential. To streamline the trial procedure for offences under the POCSO Act, State Governments must designate a Session Court as a Special Court in collaboration with the Chief Justice of the High Court as mandated by Section 28(1) of the Act. The creation of multiple courts or legal structures was deemed unnecessary by the Standing Committee Report on the POCSO Bill, which recommended that existing legal frameworks established under the Commission for Protection of Child Rights Act, 2005 should be utilized whenever possible. As a result, a Session Court will be recognized as a Special Court under the POCSO Act if it has been designated as a Children's Court under the Commission for Protection of Child Rights Act, 2005, or if any other Special Court has been appointed for comparable functions under any other law.<sup>9</sup>

"The Protection of Children from Sexual Offences Act, 2012" defines various forms of sexual abuse, such as penetrative and non-penetrative assault, sexual harassment, and pornography. This law outlines child-friendly procedures for reporting incidents, collecting evidence, conducting investigations, and expediting the hearings of criminal cases in Special Courts. Healthcare professionals, including doctors, nurses, and others in the health sector, play a crucial role in recognizing the connections between treatment, intervention, and prevention of sexual assault against children. Taking a multidisciplinary approach to this issue can enhance a child's recovery, reduce health risks, prevent further trauma, and ensure justice is served.

The POCSO Act was passed in 2012 to address child sexual abuse in India and is considered a major milestone in the country's efforts to combat this issue. This law provides a comprehensive approach to protecting children, criminalizing various sexual offences, and imposing strict penalties. Special Courts and procedures are also established under the Act to ensure a child-friendly justice system for minors involved in legal proceedings.

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<sup>8</sup>Maity, S., Chakraborty, P.R. Implications of the POCSO Act and determinants of child sexual abuse in India: insights at the state level. *Humanit Soc Sci Commun* 10, 6 (2023).

<sup>9</sup>POCSO, 2012, S- 28(1), No 32, Acts of Parliament, 2012 (India)

## **2.1 Key Provisions of the POCSO Act.**

The Protection of Children from Sexual Offences (POCSO) Act, enacted in 2012, represents a significant step in India's efforts to combat child sexual abuse. This comprehensive legal framework ensures the protection of children criminalizes a range of sexual offences and mandates stringent punishments. The Act also focuses on creating a child-friendly justice system through Special Courts and procedures designed to protect minors throughout the legal process.<sup>10</sup>

The POCSO Act defines a child as anyone below 18 years of age and categorizes sexual offences into the following:

- Penetrative Sexual Assault (Section 3): This includes any form of penetration, whether through sexual intercourse or the insertion of objects.
- Aggravated Penetrative Sexual Assault (Section 5): Offences under this section are committed by individuals in positions of authority or trust, such as family members, police officers, or teachers.
- Sexual Assault (Section 7): Involves non-penetrative acts, including inappropriate touching with sexual intent.
- Aggravated Sexual Assault (Section 9): Pertains to assaults involving persons of authority or repeat offences, making the crime more severe.
- Sexual Harassment (Section 11): This includes acts like making sexual remarks, showing pornography, or any form of sexual harassment of a child.
- Use of a Child for Pornographic Purposes (Section 13): Criminalizes the use of children in creating, distributing, or participating in pornographic activities.

### **2.1.1 PROCEDURE AND SPECIAL COURTS**

Section 28 of the Act requires the creation of Special Courts to guarantee prompt trials for acts

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<sup>10</sup>POCSO Act (Protection of Children from Sexual Harassment Act, 2012), Retrieve from:<https://www.clearias.com/pocso-act/>

covered under POCSO. According to Section 33, these courts must implement kid-friendly procedures that guarantee a child's statement is taken without upsetting them and that proceedings are finished within a year of the date of cognisance.<sup>11</sup>

### **2.1.2 MANDATORY REPORTING AND PRESUMPTION OF GUILT**

Any person who witnesses child sexual abuse is required by Section 19 to report it, including childcare providers, teachers, and medical personnel.<sup>12</sup> There may be legal repercussions if such incidents are not reported. Furthermore, in certain situations, Sections 29 and 30 transfer the burden of proof on the accused, which facilitates quicker convictions.

### **2.1.3 AMENDMENTS TO THE POCSO ACT**

The POCSO Act was modified over time to take into account how child sexual abuse is changing.

2019's revision: This amendment made several significant changes, such as:

- **Increased Penalties:** For penetrating sexual assault, the minimum sentence was raised from seven years to ten years, with the possibility of life in prison or possibly the death penalty for more serious acts.
- **Crackdown on child pornography:** Certain laws were passed to make it illegal to distribute, share, or store child pornographic content.
- **Support for victims:** Funds were set aside for victims' help and rehabilitation.
- **Expedited court process:** Required the establishment of courts on a fast track to expedite trials as well as offer justice more quickly.

In India, the POCSO Act is a crucial law aimed at protecting minors from sexual offences. The comprehensive rules reflect the seriousness of these crimes, and recent updates have made it more adaptable to current issues. To ensure swift justice and the well-being of child victims,

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<sup>11</sup>PIB Delhi, Special Courts Under POCSO Act, Ministry of Women and Child Development, 30 JUL 2021<<https://pib.gov.in/pressreleasepage.aspx?prid=1740738>>

<sup>12</sup> Sneha Mahawar, The POCSO Act, Ipleaders, May 13, 2022, <<https://blog.ipleaders.in/pocso-act-everything-you-need-to-know/>>

however, effective implementation of this law requires not only legal procedures but also a collaborative effort involving society, law enforcement, and the judicial system.

### 3. CHALLENGES IN LAW ENFORCEMENT

There are various challenges in the enforcement of the POCSO Act as mentioned below -

1. Variability in Trials of POCSO Between States and Districts
2. POCSO trials show notable regional differences in India, as well as substantial variances between case reporting as well as trial advancement. Districts differ greatly in the quantity of POCSO instances listed on eCourts, even after population size is taken into account. In Himachal Pradesh, for example, Kullu has only 0.91 instances per 100,000 people, whereas Kinnaur reports 90.35 cases per 100,000 people. These differences show how unevenly the POCSO Act is enforced and how different regions are aware of it.<sup>13</sup>
3. POCSO cases that are still pending have been growing over time, with a notable spike throughout the COVID-19 pandemic. The number of pending cases increased by 24,863 between 2019 and 2020, mostly as a result of court operations being disrupted. With more than three-quarters of POCSO cases filed since 2012 still waiting, Uttar Pradesh has the largest backlog. On the other hand, as of February 2021, Tamil Nadu has the greatest case resolution rate—80.2% of claims were settled.<sup>14</sup>
4. The average time taken to conclude a POCSO case is 509.78 days, or about a year and a half, more than the one year allowed by the Act. Only West Bengal and Chandigarh can complete cases in the legally required amount of time. Conviction cases usually take longer to settle than acquittal cases, which adds to the backlog in the administration of justice.
5. The amount of time it takes for a POCSO case to be handled varies greatly between states. With an average case duration of 1284.33 days (3 years as well as 6 months),

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<sup>13</sup>POCSO Act: Significance, Implementation, and Challenge, LawutSmart, <<https://lawutsmart.com/pocso-act-significance-implementation-challenges/>>

<sup>14</sup>A Decade of POCSO: Developments, Challenges and Insights from Judicial Data, Vidhi Centre for Legal Policy, <<https://vidhilegalpolicy.in/research/a-decade-of-pocso-developments-challenges-and-insights-from-judicial-data/>>

Delhi set the record in 2020. On the other hand, Chandigarh has the lowest case duration, with convictions averaging 311.72 days (10 months) and acquittals requiring about 179.62 days (6 months). This discrepancy suggests inefficient procedures in states where cases are prosecuted for longer periods.

6. In most states, the proportion of dismissals to convictions in POCSO cases leans significantly in favour of acquittal. In the country, there are three acquittals for every conviction. Whereas in West Bengal there are five acquittals for each conviction, in Andhra Pradesh there are seven times as many acquittals as convictions. With convictions making up 16.49% and acquittals making up 20.5% of all case dispositions, Kerala is the only state with a more balanced ratio.<sup>15</sup>
7. In POCSO trials, the evidence stage takes the longest and adds a great deal of time to the case duration. For instance, in Delhi, the evidence stage takes up 73.89% of the entire time allotted to a case (593.03 days). This crucial phase of the trial process, which includes witness testimony, exams, and cross-examinations, might be delayed, which makes it even more difficult. With an average of 13.73 hearings per case, Punjab has the highest percentage of hearings devoted to the evidence stage.
8. The most serious offences, penetrative sexual assault (31.18%) as well as aggravated penetrative sexual assault (25.59%), account for over 56% of POCSO instances. Nevertheless, just 21-26% of cases result in a conviction, which indicates that conviction rates are still low overall. Sexual harassment cases have the lowest conviction rate, at 18.16%.
9. The Act's enforcement is hampered by several issues despite its strong legal framework:
  - Underreporting: Cases of sexual abuse are often not reported enough due to social taboos, shame-related fears, and ignorance.
  - Judicial Delays: Despite the Act's guarantee of prompt trials, substantial delays are caused by overworked courts and poor infrastructure.

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<sup>15</sup>POCSO Act issues and challenges: How courts responded in 2022, Bar and Bench, <<https://www.barandbench.com/news/pocso-act-issues-and-challenges-how-courts-responded-2022>>



- **Victim Protection:** Because there are few support resources available, it can be challenging to ensure the victims' physical and mental well both during and after the trial.
- **Lack of Training:** A lot of law enforcement officers, medical professionals, along court employees are either uninformed about or not educated to handle POCSO cases, which can cause errors or delays in the prosecution process.

In India, the POCSO Act is a crucial law aimed at protecting minors from sexual offences. The comprehensive rules reflect the seriousness of these crimes, and recent updates have made it more adaptable to current issues. To ensure swift justice and the well-being of child victims, however, effective implementation of this law requires not only legal procedures but also a collaborative effort involving society, law enforcement, and the judicial system.

#### **4. ROLE OF SPECIAL COURTS AND CHILD-FRIENDLY PROCEDURES**

The establishment of Special Courts is required by the Protection of Children against Sexual Offences (POCSO) Act to guarantee that proceedings about child sexual abuse are handled in a way that is considerate of the requirements of the victims. These courts are meant to foster a child-friendly environment that reduces trauma and encourages prompt justice.<sup>16</sup>

##### **4.1 CHILD-FRIENDLY ATMOSPHERE IN SPECIAL COURTS**

To ensure the psychological well-being of child victims during the trial process, Special Courts must:

- **Permit trusted individuals to attend:** The kid may be permitted to have a trusted family member, guardian, friend, or relative present. (POCSO Act, Section 33(4)).
- **Reduce the number of times the youngster testifies in court:** The child shouldn't have to appear there more than once to provide testimony. This is meant to lessen the child's stress and keep them from becoming traumatised again. (POCSO Act, Section 33(5)).

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<sup>16</sup>Special Court and Procedure under POCSO Act 2012, <<https://advocatetanjay.com/civil/special-court-and-procedure-under-pocso-act-2012/>>

- Preserve the child's identity: Throughout the inquiry and trial, the child's identity should be kept private. Only when it is in the best interests of the child is disclosure allowed, and it needs to be supported by documentation. (POCSO Act, Section 33(7)).<sup>17</sup>
- Establish the child's age: The Juvenile Justice Act of 2015 requires the court to determine in the event that there is any disagreement over the child's age. (POCSO Act, Section 34(2)).
- Prevent direct contact with the accused: The accused should not be in direct contact with the kid while the evidence is being recorded. Instead, while making sure the accused is aware of the proceedings, strategies like video conferencing, curtains, single-visibility mirrors, or other protective measures should be employed to keep the youngster from confronting the accused. (POCSO Act, Section 36).
- Hold trials in camera: To ensure the kid feels protected, all POCSO cases have to be held on camera with the child's parents or another trusted adult present. The youngster may be examined by the court outside of the courtroom if necessary. (POCSO Act, Section 37).
- Timely trial completion: To prevent a delay in justice, Special Courts must conclude the trial within a year of the date the court obtains cognisance of the offence. (POCSO Act, Section 35).

#### **4.2 GUIDELINES FROM THE SUPREME COURT: ALAKH ALOK SRIVASTAVA V. UNION OF INDIA**

The Supreme Court stressed the importance of expediting POCSO proceedings in the historic case of Alakh Alok Srivastava v. Union of India (2018 SCC Online SC 478). The Court also gave the following directives<sup>18</sup>: The Supreme Court has emphasized the importance of addressing POCSO cases in a specialized way by instructing High Courts to ensure that judges in Special Courts receive proper training and awareness on child protection, including psychological responses. To speed up the legal process, Special Courts with exclusive

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<sup>17</sup>RULES AND PROCEDURE OF SPECIAL COURT UNDER THE POCSO ACT, <[thedulaw.com/SingleNotes?title=rules-and-procedure-of-special-court-under-the-pocso-act](http://thedulaw.com/SingleNotes?title=rules-and-procedure-of-special-court-under-the-pocso-act)>

<sup>18</sup>AIR (2018) 5 SCC 652.

jurisdiction for POCSO cases should be established in states where they are currently unavailable. These courts should prioritize prompt resolution of cases, and adhere closely to POCSO procedures to prevent unnecessary delays and avoid unnecessary adjournments.

Chief Justices of High Courts in states with limited judges must form committees to oversee the progress of these cases, ensuring accountability and efficiency. State Police Chiefs are tasked with setting up Special Task Forces to conduct thorough investigations and ensure witness availability for trials. Special Courts must provide a child-friendly environment and protect the mental health of children involved in judicial proceedings in line with the spirit of the POCSO Act.

### 4.3 PROCEDURES OF THE SPECIAL COURT

- A Sessions Court<sup>19</sup> designated as a Special Court in each district is required by Section 28(1) of the POCSO Act to try cases involving Act violations. These courts have the authority to:
- Try offences under the Indian Penal Code (IPC) concurrently with POCSO offences: Special Courts have the authority to try offences under the IPC concurrently with POCSO offences. (POCSO Act, Section 28(2)).
- Take direct cognisance: POCSO matters may be taken directly by Special Courts, which do not require a magistrate's commitment. (POCSO Act, Section 33(1)).
- Promptly record evidence: The child's testimony has to be recorded within 30 days of the court gaining jurisdiction, and any postponement must be explained in writing. (POCSO Act, Section 35(1)).
- Complete the trial swiftly: As far as possible, trials must be completed within one year of the court taking cognizance of the offence to prevent further delay in justice. (*Section 35(2), POCSO Act*).

### 4.4 CENTRAL SCHEME FOR SPECIAL COURTS

In response to the increasing backlog of POCSO cases, the Supreme Court has directed the

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<sup>19</sup>THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012, Section 33

Central Government to establish Special Courts funded entirely by the Centre. These courts will be established in districts with more than 100 active cases of sexual assault and abuse against children. The Centre must appoint support staff and prosecutors with specialized training and sensitivity in handling such cases.

Additionally, the Supreme Court has urged states to expedite forensic testing in POCSO cases due to delays hindering trial progress. The Court also criticized the National Commission for Protection of Child Rights (NCPCR) for lacking adequate data on POCSO cases and instructed them to improve oversight of the Act's implementation.

## **5. EMPIRICAL DATA ON POCSO: REPORTING CASES AND CONVICTION RATES**

### **5.1 NCRB DATA ON POCSO CASES (2017-2019)**

In 2012, the Protection of Children from Sexual Offences (POCSO) Act was passed into law in response to a rise in incidents of child sexual abuse.<sup>20</sup> The NCRB data from 2017 to 2019 shows a noticeable rise in POCSO cases, as well as troubling trends in case pendency and disposal rates. In 2020, the number of POCSO cases still outstanding in court exceeded 94%, despite efforts to expedite trials through the use of Fast Track Special Courts (FTSCs).

### **5.2 KEY INSIGHTS FROM NCRB REPORT (2017-2019):**

The Protection of Children from Sexual Offences (POCSO) Act saw a 30% surge in cases between 2016 and 2020; in 2019 and 2020, over 47,000 instances—or 129 cases per day—were recorded yearly. Between 2017 and 2020, girls accounted for 97.1% to 97.6% of all instances reported; boys made up for 2.3% to 2.8% of the victim population. POCSO caseloads increased from 88.8% in 2019 to 94.7% in 2020, with over 226,000 cases still outstanding as of January 2022. In response, 1,023 Fast Track Special Courts were created by May 2021, 389 of which were devoted to POCSO matters. POCSO conviction rates increased from 29.6% in 2016 to 39.6% in 2020, although there were significant regional differences. For example, Delhi had a conviction rate of 68.4% in 2019, while Goa, Arunachal Pradesh, and Mizoram

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<sup>20</sup>NCRB data | Crime against kids: a third still under POCSO, The Indian Express, <<https://indianexpress.com/article/india/crime-against-kids-a-third-still-under-pocso-8119689/>>

had zero convictions in some years.

### 5.3 STATE/UT WISE NCRB DATA ON POCSO (2017-2019)

#### Trends in Offences under POCSO

##### 1. Rape and Sexual Assault:

- 90% of all cases under POCSO involve rape or sexual assault.
- Cases reported under Sections 4 & 6 (rape) increased by 60% between 2017 and 2020, making up 59.4% of all cases in 2020.
- 99% of rape victims were girls.

##### 2. Unnatural Offences (POCSO Act read with Section 377 IPC):

- Between **2017 and 2020**, over **2,592 cases** were reported, of which **90%** of victims were boys.

### 5.4 NCRB DATA

- State Wise-

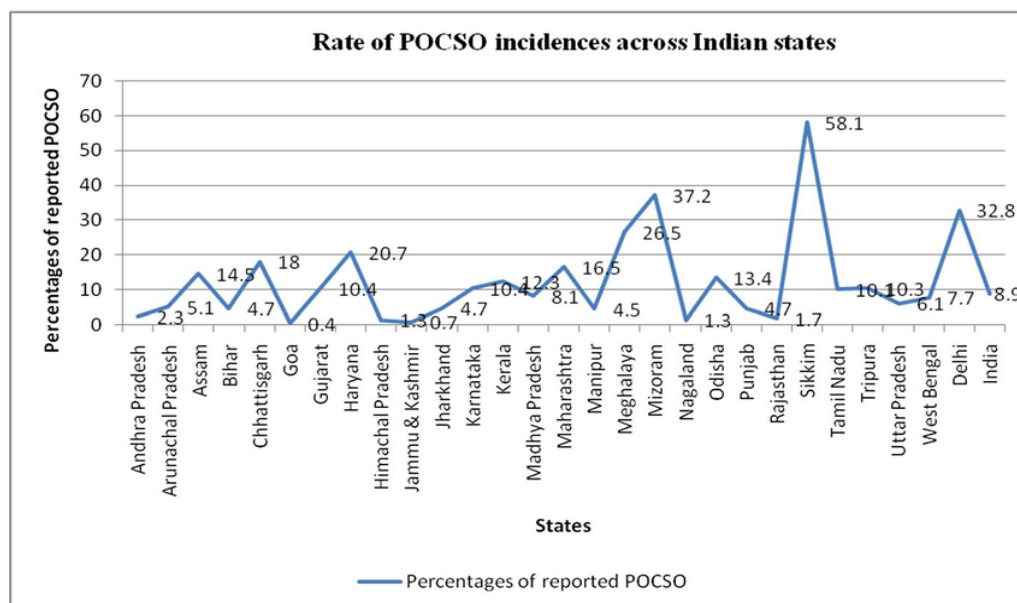
State/UT	Cases Registered (CR)	Cases Chargesheeted (CCS)	Cases Convicted (CON)	Cases Convicted (CON)
Andhra Pradesh	502	313	16	16.2%
Assam	1779	1396	83	26.8%
Bihar	1540	1184	113	67.7%
Chhattisgarh	2027	2073	349	30.7%
Gujarat	2253	2072	74	17.9%
Haryana	2074	1686	333	30.7%
Jharkhand	654	459	100	56.2%
Karnataka	2160	2021	190	18.9%
Kerala	1283	1009	40	19.4%
Madhya Pradesh	6123	5867	874	30.1%
Maharashtra	6558	6295	706	28.9%

Rajasthan	596	423	178	60.3%
Tamil Nadu	2396	2228	286	25.4%
Uttar Pradesh	7594	6478	1002	62.5%
West Bengal	2267	2403	90	29.9%

• Union Territory Wise-

Union Territory	Cases Registered (CR)	Cases Chargesheeted (CCS)	Cases Convicted (CON)	Conviction Rate (CVR)
Delhi	1719	1589	718	68.4%
Puducherry	48	45	4	100%
Chandigarh	5	6	0	0%
Lakshadweep	25	11	0	0%

5.5 GRAPH REPRESENTING REPORTED CASES STATE WISE



Source: Author's own graphical presentation based on NCRB data

5.6 PENDENCY AND CONVICTION RATES IN POCSO CASES: A GROWING CONCERN

The serious problem of child sexual abuse in India was addressed in 2012 with the introduction

of the Protection of Children against Sexual Offences (POCSO) Act.<sup>21</sup> The Act has been put into effect, but the backlog of POCSO cases with a low conviction rate still makes it difficult to administer justice. The seriousness of this problem is highlighted by information gathered by the National Crime Records Bureau (NCRB) along with other recent reports.

### **Rising POCSO Cases and Court Pendency**

- There was a more than 30% increase in POCSO incidences between 2016 and 2020. POCSO cases were still ongoing in court by the end of 2020, up from 88.8% in 2019.
- Things became worse in 2022, when only 3% of POCSO charges resulted in convictions, underscoring the system's increasing inefficiencies.

### **Alarming Statistics on Child Sexual Abuse**

- In **2019 and 2020**, more than **47,000 POCSO cases** were registered each year, with an average of **129 cases reported daily**.
- **90%** of all POCSO cases involve **rape and sexual assault**, with **99%** of rape victims being girls. The number of cases under **Sections 4 & 6** (rape) surged by nearly **60%** between **2017 and 2020**.<sup>22</sup>

### **Pending Cases and Efforts to Address Backlog**

- Over 47,000 POCSO instances were reported annually in 2019 and 2020, including an average of 129 cases submitted each day.

Sexual assault and rape account for 90% of POCSO instances, with girls constituting 99% of rape victims. Between 2017 and 2020, there was a nearly 60% increase in the number of cases of rape under Sections 4 and 6.

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<sup>21</sup>Data: POCSO cases increased by 30% in 5 years while pendency rate in Courts crossed 94%,  
<<https://factly.in/data-pocso-cases-increased-by-30-in-5-years-while-pendency-rate-in-courts-crossed-94/>>

<sup>22</sup>Only 3% of POCSO cases in 2022 saw convictions: Report Currently, there are 351 fast-track courts  
<https://www.deccanherald.com/india/over-243-lakh-pocso-cases-pending-in-fast-track-courts-till-jan-2023-3-conviction-rate-in-2022-report-2804200>

### **Conviction and Charge Sheet Rates**

- In 2020, the police charge-sheeted 94.7% of POCSO cases; nonetheless, the conviction rate is still incredibly low.
- The alarming fact that only 3% of cases result in convictions in 2022, notwithstanding the high charge filing rate, is revealed.
- In 2020, the conviction rate for POCSO cases was 37.9%, while it was 39.3% for IPC rape cases involving women. However, in 2022, this percentage sharply decreased.

### **Police vs. Court Disposal Rates**

Why POCSO cases are handled by the police comparatively more quickly than IPC crimes involving women? In 2020, for instance, the charge filing rate for POCSO rape cases was 96.3%, while the rate for IPC rape cases was 82.2%.

Court disposals, however, continue to be difficult despite these efforts. Both POCSO as well as IPC rape cases continue to have a courtroom pendency rate exceeding 94%.

### **Fast Track Courts and Special POCSO Courts**

- To speed the trial and resolution of POCSO cases, 1,023 Fast Track Special Courts (FTSCs) were formed, including 389 exclusive POCSO courts. 640 FTSCs were in service in 26 states and UTs as of May 2021. The backlog of cases keeps increasing in spite of the efforts made, highlighting the necessity for addressing these delicate cases more effectively.<sup>23</sup>

## **6. SIGNIFICANT CASE STUDY**

### **Bijoy v. The State of West Bengal (2017)**

The Calcutta High Court issued important guidelines in this case to protect the dignity of minor

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<sup>23</sup>Over 2.4 lakh POCSO cases pending in Fast Track Special Courts, shows ICPF data, The Indian Express, <<https://www.newindianexpress.com/nation/2023/Dec/09/over-2-4-lakh-pocso-cases-pending-in-fast-track-special-courts-showsicpf-data-2640054.html>>



victims of sexual assault. Important instructions consist of<sup>24</sup>: (1) By Section 19 of the POCSO Act, police personnel must register the FIR and advise the victim and their parents of their rights to legal representation and assistance. (2) By Section 27 of the POCSO Act, the kid shall be sent for a medical examination as soon as the FIR is registered. The kid shall be submitted to the local kid Welfare Committee (CWC) if they meet the criteria to be considered "in need of care and protection" as stated in Section 2(d) of the Juvenile Justice Act, 2000. (3) The victim's identity must be kept private and kept out of the public eye. Additionally, the Court emphasized that compensation under Section 33(8) of the POCSO Act can be awarded at the interim stage, separate from the compensation payable by the convict, to aid in the victim's relief and rehabilitation.

### **State of Chhattisgarh v. Vishnu Kumar (2017)**

The Chhattisgarh High Court released recommendations for judicial officers and emphasised the necessity of adhering to Section 36 of the POCSO Act<sup>25</sup>: (1) The presiding officer should make sure the kid witness is at ease, interact with them directly, and provide toys or candy to help them feel less nervous. (2) Strict guidelines for evidence may be loosened to put the pursuit of justice and the truth first. (3) To prevent undue influence, the Court should guarantee the child's safety and permit the recording of statements after enough time. Children's statements should be carefully examined because of their vulnerability and influence.

### **State of U.P. v. Dinesh Kumar Maurya (2016)**

In the victim's allegation of forced sexual relations, the Allahabad High Court overturned a conviction under Sections 3 and 4 of the POCSO Act for lack of physical injury-proof.<sup>26</sup> The Court observed: (1) Injuries can bolster a victim's testimony, but they are not always required to establish sexual assault. (2) Taking into account the risk of false accusations, the Court must acknowledge that minor victims may be swayed by their parents or other carers.

### **The State of M.P. and Ors. v. Sunderlal (2017)**

The Madhya Pradesh High Court heard a request in this instance to end the pregnancy of a

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<sup>24</sup>2017 W.P. 7891

<sup>25</sup>AIR 2017 SCC 607

<sup>26</sup>Criminal Appeal No. 392 of 2016

minor victim. The Court ordered<sup>27</sup>: (1) Parental consent, not the minor's assent, is adequate for termination for minors. (2) Article 21 of the Indian Constitution grants the freedom to end a pregnancy. (3) In compliance with the Medical Termination of Pregnancy Act, of 1971, a committee including three licensed medical professionals is required to assess and provide a recommendation about the termination. (4) If termination is authorised, the victim shall receive all services and support from the State. A sealed cover should also be used to preserve a fetus's DNA sample.

## **7. SHORTCOMING**

Numerous objections have been levelled at the Protection of Children from Sexual Offences (POCSO) Act because of procedural and operational issues. One significant problem is the abuse of the last-seen approach, which can result in unjust convictions when applied without accompanying circumstantial evidence, as the Supreme Court noted in *Anjan Kumar Sarma v. State of Assam* (2017)<sup>28</sup>. Furthermore, the investigative apparatus frequently lacks adequate training, which results in defective investigations. This was demonstrated in the 2017 case of *Addl. Sessions Judge, Hoingoli and Ors. v. Bhawat and Ors.*<sup>29</sup>, where improper handling jeopardised evidence.

Since children's permission is not considered important, the Act's silence on consensual sexual activity between minors and adults creates legal problems. The provision in Section 22, which exempts youngsters from penalty for making false accusations, is abused and weakens its efficacy. The Act's requirement for speedy trials is hampered by the growing quantity of pending cases. Last but not least, the implementation of the two-finger test continues to violate victim privacy and dignity, as the 2013 case *Lillu @ Rajesh and others v. State of Haryana* highlights, casting doubt on the Act's dedication to defending victims' rights.

## **8. RECOMMENDATIONS**

Several important modifications are necessary for the POCSO Act to address its existing deficiencies and ensure fair implementation. To prevent criminalizing consensual relationships, the Act should clarify laws concerning sexual activity between minors and

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<sup>27</sup>AIR 2017, SCC 589

<sup>28</sup>AIR 2017 SCC 359

<sup>29</sup>AIR 2016 SCC 195

slightly older individuals. It should also establish the legal status of two children engaging in sexual behaviour and provide clear guidelines for managing such situations. Additionally, clear standards for acceptable documents for age verification are needed to handle cases where ossification tests yield inconclusive results and uphold the presumption of innocence for the child.

The Act should be amended to remove gender bias and hold all genders accountable for their actions as offenders. Punishment provisions should be reassessed to align with the seriousness of the offence, particularly in cases involving close relatives. Furthermore, the consideration of harsh penalties like the death penalty should be reviewed due to the potential psychological impact on victims, and alternative measures should be explored to support mental well-being while ensuring justice. These changes would address current deficiencies and biases, providing more effective protection and equitable legal processes.

## **9. CONCLUSION**

The Protection of Children from Sexual Offences (POCSO) Act is an important piece of legislation aimed at protecting children from sexual abuse, but it faces various challenges that hinder its effectiveness. Issues such as the misuse of the last-seen theory, inadequate investigation procedures, and uncertainties in handling consensual actions involving minors point to critical deficiencies in the Act. Moreover, the Act's goal of delivering timely justice is compromised by its inability to address the backlog of pending cases and false allegations by minors. The use of the outlawed two-finger test further violates the privacy and dignity of victims. It is necessary to make amendments to the Act to ensure gender neutrality, standardize age verification, address procedural inconsistencies, and clarify consent provisions to enhance its effectiveness. Implementing these changes would improve the POCSO Act's ability to protect and provide justice for sexually abused children, strengthening India's legal framework for child safety.